

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROY CLINKSCALES, III,
Plaintiff,

DEMAND FOR JURY TRIAL

v.

CAPITAL ONE BANK (USA), N.A.,
Defendant.

COMPLAINT AND JURY DEMAND

**NOW COMES THE PLAINTIFF THROUGH COUNSEL, CREDIT
REPAIR LAWYERS OF AMERICA, BY GARY D. NITZKIN**, and for his
Complaint against the Defendant, pleads as follows:

JURISDICTION

1. Jurisdiction of this court arises under 15 U.S.C. § 1681p.
2. This is an action brought by consumers for violation of the Fair Credit Reporting Act (15 U.S.C. § 1681 et. seq [hereinafter “FCRA”]).

PARTIES

3. The parties to this lawsuit are:
 - a. Roy Clinkscales, III is the Plaintiff in this action. He resides the City of Detroit, Michigan in the County of Wayne. He is a “Consumer” as defined by the FCRA at 15 U.S.C. 1681a(c).

- b. The Defendant to this lawsuit is Capital One Bank (USA), N.A. (“Capital One”) is a national banking association that conducts business in the state of Michigan.

VENUE

4. Venue is proper before this court pursuant to 28 U.S.C. 1391(b), as the transactions and occurrences that form the basis of this action occurred in Detroit, Michigan.

GENERAL ALLEGATIONS

5. On July 13, 2017, Plaintiff obtained his Experian credit file and noticed an inquiry from Capital One that did not belong to him (“Capital One Inquiry”).
6. Mr. Clinkscales has never applied for credit or employment with Capital One.
7. On or about September 19, 2017, Mr. Clinkscales submitted a letter to Experian disputing the Capital One inquiry.
8. Upon information and belief, Experian forwarded Mr. Clinkscales dispute to Capital One.
9. On October 16, 2017, Mr. Clinkscales’ counsel sent a letter to Capital One inquiring about Capital One’s purpose in obtaining Mr. Clinkscales’ credit file.
10. To date, Mr. Clinkscales has not received Experian’s investigation results.

- 11.To date, Capital One has not responded to the letter from Mr. Clinkscales' counsel.
- 12.On November 22, 2017, Mr. Clinkscales obtained his Experian credit file and noticed that the Capital One inquiry remained on his credit file.
- 13.Capital One never had any federally permissible purpose as required by 15 U.S.C. 1681b to obtain Plaintiff's credit report.
- 14.Plaintiff did not apply for credit, apply for a job or for insurance, have an open credit account, or owe money to Capital One or, in any fashion, have any business relationship with it.
- 15.Capital One never had a legitimate need for the Plaintiff's consumer credit reports.

COUNT I: VIOLATION OF THE FCRA — NEGLIGENTLY AND/OR KNOWINGLY OBTAINING A CONSUMER REPORT WITHOUT A PERMISSIBLE PURPOSE

- 16.Plaintiff incorporates the preceding paragraphs.
- 17.Plaintiff never applied for credit with Capital One.
- 18.Capital One never had any federally permissible purpose as listed at 15 U.S.C. § 1681b to obtain the Plaintiff's consumer credit reports from any credit reporting agency.

19.Capital One acted willfully and/or negligently in requesting and obtaining Plaintiff's credit report without a federally permissible purpose as required by 15 U.S.C. § 1681b.

20.Capital One has therefore violated Plaintiff's rights under 15 U.S.C. § 1681b(f).

WHEREFORE, PLAINTIFF REQUESTS that this Court enter judgment in his favor and against Capital One as follows:

- a. pursuant to 15 U.S.C. § 1681n(a) (1) (B), award him actual or statutory damages, or \$1,000 for each access of his credit report, whichever is greater;
- b. pursuant to 15 U.S.C. § 1681n(a) (2), award such punitive or exemplary damages as the Court deems appropriate;
- c. pursuant to 15 U.S.C. § 1681n(a) (3), award costs of the action and reasonable attorney fees; or
- d. pursuant to 15 U.S.C. § 1681o award him actual damages, plus costs, interest and attorneys' fees; and
- e. grant such other and further relief as the court deems just and proper.

COUNT II: VIOLATION OF THE FCRA – FALSELY CERTIFYING OR FAILING TO CERTIFY THE PURPOSE FOR WHICH DEFENDANT INTENDED TO USE PLAINTIFF'S CONSUMER CREDIT REPORTS.

21.Plaintiff incorporates the preceding paragraphs.

22.Capital One was required to certify the purpose for which it intended to use Plaintiff's consumer credit report in compliance with the FCRA at 15 U.S.C. § 1681b(f).

23.Capital One never had any federally permissible purpose to obtain Plaintiff's consumer credit report and, hence, was never in a position to certify to any credit reporting agency that it had a right to pull his credit report for any reason.

24.Nevertheless, Capital One obtained Plaintiff's consumer credit reports.

25.Capital One either falsely certified to Experian that it had a federally permissible purpose to obtain Plaintiff's consumer credit report or failed to provide such certification as required by 15 U.S.C. § 1681b(f)(2).

WHEREFORE, PLAINTIFF REQUESTS that this Court enter judgment in his favor and against Capital One as follows:

- a. pursuant to 15 U.S.C. § 1681n(a)(1)(B), award him actual or statutory damages, or \$1,000 for each access of his credit report, whichever is greater;
- b. pursuant to 15 U.S.C. § 1681n(a)(2), award such punitive or exemplary damages as the Court deems appropriate;
- c. pursuant to 15 U.S.C. § 1681n(a)(3), award costs of the action and reasonable attorney fees; or

- d. pursuant to 15 U.S.C. § 1681o award his actual damages, plus costs, interest and attorneys' fees; and
- e. grant such other and further relief as the Court deems just and proper.

COUNT III – INVASION OF FINANCIAL PRIVACY

26.Plaintiff incorporates the preceding paragraphs.

27.Plaintiff's credit information is private. He has a right to privacy of that information as promulgated in the FCRA.

28.Capital One, in contravention of the FCRA, obtained Plaintiff's private credit information.

29.Plaintiff has been damaged by Defendant's invasion of Plaintiff's private consumer credit information.

WHEREFORE, PLAINTIFF REQUESTS that this Court enter judgment in his favor and against Defendant as follows:

- a. award his actual damages, costs, interest and attorneys' fees;
- b. declare and order that Defendant conduct in obtaining his credit report without a permissible purpose is a violation of the FCRA;
- c. order preliminary and permanent injunctive relief enjoining and restraining Capital One from keeping or publishing the illegally obtained credit report(s), or requesting new reports; directing Capital

One to return to Plaintiff all copies or abstracts of his consumer report or any information contained therein; and

- d. grant such other and further relief as the court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by Jury.

Respectfully submitted,

Dated: November 28, 2017

/s/ Gary Nitzkin

GARY D. NITZKIN (P 41155)

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CREDIT REPAIR LAWYERS OF AMERICA

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